IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 190 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

BHAGWATI SPHEROCAST LTD

Appearance:
MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 17/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following questions have been referred for the opinion of this Court in respect of assessment year

1983-84 :-

"(1) Whether, the Appellate Tribunal is right in law and on facts in directing the ITO to take into account the value of the work-in-progress for the purpose of calculating relief under Section 80J of the I.T.Act ?

(2) Whether, the Appellate Tribunal is right in law and on facts in holding that reimbursement of medical expenses and perquisite on account of telephone cannot be considered for the purpose of working out the disallowance u/s. 40A(5)? "

2. We have heard Mr.M.R.Bhatt learned Counsel for the revenue. Though served, none appears for the respondent-assessee.

3. As far as Question No.1 is concerned learned Counsel has fairly pointed out that the controversy raised herein is concluded in favour of the assessee by the decision of the Supreme Court in case of C.I.T. V/s. Karnataka Power Corporation 247 ITR 268. We accordingly answer question No.1 in the affirmative i.e. in favour of the assessee and against the revenue.

4. Coming to Question No.2, learned Counsel has pointed out that the controversy raised herein is concluded in favour of the revenue by the decision of this Court in case of C.I.T. V/s. Ambica Mills Ltd. 236 ITR 921. We accordingly answer question No.2 in the negative i.e. in favour of the revenue and against the assessee.

5. The Reference accordingly stands disposed of with no order as to costs.

(M.S.Shah, J) (D.A.Mehta, J)
'Bhavesh'